

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the  
Commission's Own Motion to Establish  
Consumer Rights and Consumer Protection  
Rules Applicable to All Telecommunications  
Utilities.

Rulemaking 00-02-004

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON  
COMMISSIONER GRUENEICH'S ALTERNATE PROPOSED DECISION ON  
TELECOMMUNICATIONS CONSUMER PROTECTION PROGRAM**

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February 21, 2006

## **I. INTRODUCTION**

In accordance with Rule 77 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the schedule set forth in the Notice of Availability issued on January 25, 2006, the Division of Ratepayer Advocates (DRA) submits these reply comments on Commissioner Grueneich's Alternate Proposed Decision (Alternate) on the Telecommunications Consumer Protection Program. Although the Alternate has substantially eliminated and streamlined a number of the consumer protection rules that the Commission adopted in Decision (D.) 04-05-057 and reflected in General Order 168 in order to accommodate the industry, carriers still oppose and continue to assert that the rules remaining in the Alternate are too prescriptive. It is clear that carriers simply do not want the Commission to adopt any consumer protection rules. The Commission should not give into carriers' request to adopt the Peevey PD because it is extreme and anti-consumer. Instead, the Commission should promptly move forward and adopt the Alternate because it is a well-reasoned compromise, which will benefit both consumers and carriers. The Alternate provides important protections to consumers and provides the right amount of flexibility to carriers to meet the demands of the competitive telecommunications marketplace. Below, DRA responds to a number of key issues raised by carriers in their opening comments.

## **II. DISCUSSION**

### **A. Rule 3(f) – 30-day Rescission Period**

Carriers assert that they will suffer substantial harm by the 30-day rescission rule proposed in the Alternate. Rule 3(f) provides subscribers the necessary 30-day period to cancel their service without incurring early termination fees or penalties.<sup>1</sup> Specifically, the Wireline Group argues that this rule denies a carrier the right to recover for work done outside of a customer's premises before cancellation. The Wireline Group is wrong. As cited in DRA's Opening Comments, the Commission in D.04-10-013 held that carriers are permitted to recoup non-recurring costs as part of its basic rates and charges. Furthermore, in D.04-05-057, the Commission again held that carriers can recoup non-recurring costs in their non-recurring charges. The Commission specifically held that "The rule ...does not relieve the subscriber from obligations for use made of the service before canceling, or reasonable charges for work done on the customer's premises before the subscriber canceled."<sup>2</sup> Further, carriers have presented no evidence qualifying alleged, potential harm.<sup>3</sup> Therefore, carriers' argument regarding substantial harm is speculative, without support and without merit.

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<sup>1</sup> Alternate PD, p. A-4.

<sup>2</sup> D.04-05-057, p. 49.

<sup>3</sup> For example, how prevalent is off-premises construction to single residential and small-business customers? How  
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T-Mobile also objects to the Alternate's 30-day rescission period as potentially costly. However, many carriers already provide a 14- or 15-day rescission period; some even provide 30 days. Carriers have also repeatedly stated throughout this proceeding that they make every effort to retain customers. A 30-day rescission period would further that effort because it would allow carriers to provide service of sufficient quality as to prevent customers from leaving. Thus, there is no record quantifying carrier burden regarding this rule's codification of common carrier practice, nor its extension of the time period carriers already provide.

## **B. Non-Communications Rules**

Verizon Wireless and other wireless carriers continue object to the imposition of non-communications (non-com) rules. Specifically, Verizon Wireless states that the non-com rules restrict the types of services that carriers can offer and hence limit the variety of services from which customers can choose.<sup>4</sup> It cites the ability for a customer to buy a Coke from a vending machine with a cell phone without having to enter a PIN or undergo other security procedure for that purchase to support its position.<sup>5</sup> DRA disagrees with Verizon Wireless' assertion and does not believe that the extra precaution of having to enter a PIN code or other equally secure mechanism is burdensome. While having to enter a PIN code would require a customer to take an extra step before making a purchase for goods or services, the benefits of this protection to consumers (such as protection from fraud, cramming and privacy violations including identity theft) substantially outweigh any potential cost to carriers to implement more secure transactions. As the California Small Business Roundtable notes, even small business owners have experienced problems because of "vague, ambiguous misleading and often simply non-existent authorizations for non-comm related charges,"<sup>6</sup> failure of billing carriers to screen and supervise billing agents and vendors, unreachable customer service, and services that did not meet providers' representations. Therefore, the non-com rules are necessary and the benefits clearly outweigh the costs.

In addition, requiring a security mechanism for non-com charges is no more burdensome or costly than what the legislature has required of the credit card industry. Credit card users, whether over the telephone or via Internet, must engage in a process, usually much more time-consuming than pushing four digits of a PIN code when making a purchase. Typically, the credit card user must speak with a live person or interact with a computer display and provide key identification information, such as name,

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many customers cancel immediately after construction? How do carriers recover cost currently?

<sup>4</sup> Verizon Wireless Opening Comments, p. 11.

<sup>5</sup> Id.

<sup>6</sup> CSBRT Opening Comments, p.1.

credit card number, and credit card authentication number and expiration date. In person, the credit card user must provide a signature in order authorize the purchase.

Verizon Wireless objects that no consumer group has provided complaint data on non-com transactions.<sup>7</sup> Such a test, however, is impossible to meet since both CTIA and the Wireline Group have stated that non-com services are not currently being provided in California. It is not possible to have complaints about a service that is not even being provided.

### **C. Implementation Costs**

Sprint Nextel argues that the cost of complying with the rules is overwhelming and that consumers will be harmed as a result.<sup>8</sup> The evidence Sprint Nextel provides are weak and thus, should be given little or no weight. First, it relies on its witness Mr. Herman's testimony. However, Mr. Herman did not submit evidence concerning the costs of complying with the new rules, but spoke only generally about costs and difficulties carriers would face.<sup>9</sup> Second, Sprint Nextel refers to carrier demonstrations of difficulties in attempting to comply with D. 04-05-057.<sup>10</sup> The only "record" of alleged carrier costs, however, is behind-the-scenes demonstrations to the Commission's Telecommunications Division. Parties have had no opportunity to test that information. There is no cost evidence in the public record as there is regarding consumer complaints. Lastly, Sprint Nextel relies on the Declaration of Mark Byers. Mr. Byers' evidence, however, was untested in cross examination, and not based on the rules under consideration in California.<sup>11</sup> Moreover, none of the evidentiary support relied upon by Sprint Nextel convincingly demonstrates that the implementation costs will harm consumers.

### **D. Rule 4 – Prepaid Calling Cards and Services**

The Wireline Group objects to the Alternate's Rule 4, governing prepaid calling cards and services, asserting that the rule applies unfairly to carriers and not other entities providing such services.<sup>12</sup> However, as Wireline Group points out, Rule 4 is based on Business & Professions (B&P) Code § 17538.9, which governs the entire scope of the calling card arena. For non-carrier entities over which the Commission has no jurisdiction, the B&P Code places those entities in equal position with carriers under the Commission's jurisdiction. Therefore, there is no inequality in treatment between entities as the Wireline Group asserts. The only difference is that the Commission monitors entities it regulates.

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<sup>7</sup> Verizon Wireless Opening Comments, p. 12.

<sup>8</sup> Sprint Nextel Opening Comments, pp. 5-6.

<sup>9</sup> Id.

<sup>10</sup> Sprint Nextel Opening Comments, p. 6.

<sup>11</sup> Sprint Nextel Opening Comments, p. 5.

<sup>12</sup> Wireline Group, Opening Comments, p. 9.

### **E. Rule 6 - Carrier-Initiated Changes in Contracts**

T-Mobile asserts Rule 6(a) is unnecessary because carriers already notify customers of changes in contracts.<sup>13</sup> T-Mobile also states that non-term-contract customers can simply cancel service if carriers make contract changes, so a rule requiring customer notice is unnecessary. Many customers, however, may not notice changes because the only “notice” would be the monthly bill. The bill amount can change due to usage variations, so rate changes may easily go unnoticed. Therefore, codifying what apparently amounts to a “best practice” among carriers is appropriate and wise public policy.

### **F. Complaint Data**

CTIA asserts that if “inquiries” were removed from CAB data, wireless complaints would show a decrease over the recent five year period.<sup>14</sup> Statistically, that would not be possible, since the ratio of “complaints” to “inquiries” has remained relatively constant over that period at about 90% complaints, 10% inquiries.<sup>15</sup>

CTIA also complains about the partial representation of the record employed by the Alternate in its description of surveys as not adequately portraying carrier/customer history.<sup>16</sup> However, CTIA states that the absence of carriers’ own complaint data is somehow not problematic. Incomplete survey information is a problem, but incomplete customer complaint information is not? DRA maintains that the record on customer complaints shows only the “tip of the iceberg.” The Commission’s CAB data serves as an indicator, not as the sum total of consumer problems on which the Commission must rely to impose consumer protection rules. Carriers’ complaint histories are every bit as important as, if not more important than, another survey of customer perceptions. The lack of carriers’ complaint information is significant.

T-Mobile asserts that carriers’ complaint data was never at issue in this proceeding.<sup>17</sup> That is simply not true. At the Pre-hearing Conference in April 2005, the Attorney General’s office emphasized the importance of such information and specifically asked that it be made available to parties. The fact that access to such information was pointedly denied to parties is telling of inherent bias in the process in this proceeding.

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<sup>13</sup> T-Mobile Opening Comments, p. 12.

<sup>14</sup> CTIA Opening Comments, p. 5, fn 11.

<sup>15</sup> Lynn Maack, RT Vol. 14, p. 1372.

<sup>16</sup> CTIA Opening Comments, p. 9.

<sup>17</sup> T-Mobile Opening Comments, p. 6, fn 18.

### **G. Competition**

CTIA tries to deflect National Association of State Utility Advocates' (NASUCA) argument that competition has not protected consumers. CTIA's reference to the Federal Communications Commission's (FCC) Truth-in-Billing Order statement as only concerning misleading line item charges is itself misleading. The FCC's order language was broader than billing line items. The order referred to consumers being "stymied in their efforts to shop between carriers based on accurate information about the true cost of telecommunications services ...."<sup>18</sup> The FCC also said, "Perversely, without government regulation, inefficient carriers can hide their inefficiencies in line item charges while maintaining and advertising monthly and usage rates that are as low as, or even lower than their competitors."<sup>19</sup> The FCC's statement obviously applies to carriers' marketing of services, thereby supporting the need for rules governing certain marketing practices. The Alternate addresses this need.

### **III. CONCLUSION**

While DRA, similar to The Utility Reform Network, would ideally prefer the reinstatement of GO 168 in its entirety, it is willing to and supports the Alternate because it still contains a number of important consumer protection rules, in addition to having consumer rights, consumer education and a strong enforcement program. DRA, however, opposes Commissioners Peevey and Kennedy's Proposed Decision because it has virtually removed all of the key consumer protection rules adopted in GO 168 and thus, provides no real protection to consumers. Accordingly, DRA urges the Commission to adopt the Alternate and reject the PD.

Respectfully submitted,

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<sup>18</sup> CTIA Opening Comments, p.10.

<sup>19</sup> Id.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON COMMISSIONER GRUENEICH’S ALTERNATE PROPOSED DECISION ON TELECOMMUNICATIONS CONSUMER PROTECTION PROGRAM**” in

**R.00-02-004**, by using the following service:

[ X ]     **E-MAIL SERVICE:** sending the entire document as an attachment to an e-mail message to all know parties of record to this proceeding who provided e-mail addresses.

[ X ]     **U.S. MAIL SERVICE:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed in San Francisco, California, on the **21<sup>st</sup>** day of **February, 2006**.

/s/    ANGELITA F. MARINDA  
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Angelita F. Marinda

**N O T I C E**

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